APPENDIX

APPENDIX A

172 NLRB No. 255 D-1328
Clarksburg, W. Va.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Cases 6-CA-3989
Cases 6-RM-326

HECK'S, INC.
and
AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, FOOD STORE EMPLOYEES UNION, LOCAL No. 347, AFL-CIO

Decision and Order

On May 7, 1968, Trial Examiner Frederick U. Reel issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. The Trial Examiner also found that the Respondent had not engaged in certain other unfair labor practices. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision, and the General Counsel and the Charging Party filed cross-exceptions and supporting briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with these cases to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision,

the exceptions and briefs, and the entire record in these cases, and hereby adopts the findings,[1] conclusions, and recommendations[2] of the Trial Examiner, as modified below.

1. The Trial Examiner found, and we agree, that the Respondent engaged in numerous violations of Section 8(a)(1) by conduct which included threats, interrogation, coercive interviews, and illegal polls.[3] Such conduct, which took place during May, June, and July 1967, prior to the election held on July 13, was directed at 33 of the 38 employees in the unit.

2. The Trial Examiner found that the Union represented a majority of the employees in the appropriate unit, but

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[1] As found by the Trial Examiner, an election was conducted on July 13, 1967, in the following stipulated unit, which we find to be appropriate:

> All employees of the Respondent's Clarksburg, West Virginia, store, excluding supervisors, guards, and professional employees.

The Union lost the election by a vote of 19 to 16, and thereafter filed timely objections to conduct affecting the election. We sustain the Union's Objections Nos. 1, 2, 3, 5, and 6, insofar as they related to the Respondent's unlawful conduct committed after May 29, 1967, the date of the filing of the petition in Case 6-RM-326. Accordingly, as recommended by the Trial Examiner, we shall set aside the election.

[2] The Charging Party in its exceptions urges the appropriateness of certain remedies in addition to those recommended in the Trial Examiner's Decision. We deem it inappropriate in this proceeding to grant this request to depart from our existing policies with respect to remedial orders, and, therefore, find no merit in these exceptions.

[3] The General Counsel and the Charging Party have excepted to the Trial Examiner's failure to find other alleged violations of Section 8(a)(1). We deem it unnecessary to pass upon these allegations as such conduct would, in any event, be cumulative, and would not enlarge the scope of our order.

the Trial Examiner further found that the General Counsel failed to establish that the Respondent did not have a good-faith doubt as to the Union's majority when it refused to bargain, and, accordingly, he did not sustain the Section 8(a)(5) allegation of the complaint. We find merit in the exceptions of the General Counsel and the Charging Party to this finding for the reasons set forth below.

As already noted, the Respondent engaged in extensive violations of the Act which directly involved nearly every employee in the unit. We note further that the Board has recently found that this Respondent engaged in a pattern of similar unfair labor practices at its other stores in West Virginia and Kentucky, and that the Respondent has a labor policy in all its stores that is opposed to the policies of the Act.[4] Earlier Board decisions involving the Respondent's operations show that President Haddad and Vice President Darnall, who together control the labor policy at all the

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[4] In *Heck's, Inc.*, 171 NLRB No. 112, issued subsequent to the Trial Examiner's Decision in this case, the Board stated:

> It is clear that the Respondent has the same labor relations policy affecting all employees at all of its stores, [footnote omitted] and this policy is based, in part, on opposition to the freedom of choice by its employees in regard to collective bargaining. It is also apparent that . . . the proximity of the stores, and the active participation of top company officials in carrying out this illegal labor policy, all have the effect of emphasizing individual incidents of unlawful conduct. The repetition of conduct which had earlier been found unlawful at this same store and to many of the same employees further indicates a disregard for the policies of the Act, and the impact of such repeated conduct therefore is much greater than in the initial incident.
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> Upon review of all the relevant factors herein, we conclude that the Employer's unlawful conduct in this case is amplified by, and is part of its company-wide antiunion policy, [footnote omitted] and its impact must be evaluated in the context of its prior flagrant unlawful practices. Such conduct clearly reflects a rejection of the collective-bargaining principle.

Respondent's stores, have both actively participated at a number of stores in conduct found to be unlawful.[5] Both have repeated their unlawful conduct in the present cases. Such flagrant repetition of conduct previously found unlawful shows a complete disregard by the Respondent of its obligations under the Act.

In normal circumstances, an election by secret ballot, if free from improper or unlawful interference, is a more satisfactory means of determining employees' wishes than a showing of authorization cards. Accordingly, an employer who withholds recognition on the basis of a good-faith doubt of a union's majority does not violate Section 8(a)(5) of the Act, but may withhold recognition until the results of an election resolve his doubt.[6] In order to determine, whether an employer's insistence upon a Board election is based upon such a good-faith doubt, we consider all the relevant circumstances, including any unlawful conduct of the Employer, the sequence of events, and the time lapse between the refusal and the unlawful conduct. In the instant cases, the Respondent's refusal to grant recognition, followed by its extensive violations of the Act and its interference with the employees' free choice in the Board conducted election, clearly evidence its unlawful motive and justify an interference of bad faith.[7] Consequently, we

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[5] *Heck's, Inc., Ibid; Heck's Discount Store,* 150 NLRB 1565, enfd. 369 F.2d 370 (C.A. 6); *Heck's, Inc.,* 156 NLRB 760, enfd. in part 386 F.2d 316 (C.A. 4); *Heck's, Inc.,* 159 NLRB 1151, enfd. 387 F.2d 65 (C.A. 4); *Heck's, Inc.,* 159 NLRB 1331, consent decree entered, June 13, 1967, (No. 11, 390, C.A. 4); *Heck's, Inc.,* 166 NLRB No. 32, enfd. in part — F.2d — (C.A. 4); *Heck's, Inc.,* 166 NLRB No. 38, enfd. in part — F.2d — (C.A. 4); *Heck's, Inc.,* 170 NLRB No. 53. See also *Heck's, Inc.,* 158 NLRB 121, enfd. 387 F.2d 65 (C.A. 4).

[6] *Aaron Brothers Company of California,* 158 NLRB 1077, 1078; *H & W Construction Company,* 161 NLRB 852, 857.

[7] *Hammond & Irving, Incorporated,* 154 NLRB 1071, 1073.

find, contrary to the Trial Examiner, that the General Counsel has established that the Respondent's refusal to recognize the Union was not based on a good-faith doubt of the Union's majority status. We find further that its refusal was for the purpose of utilizing the preelection period to undermine the Union's majority, and that the Respondent thereby made it impossible to hold a free and fair election. Accordingly, we find that the Respondent refused to bargain with the Union, in violation of Section 8(a)(5) and Section 8(a)(1) of the Act. In any event the Respondent's extensive Section 8(a)(1) violations, on which it embarked at about the time the Union attained its majority status and which made a free and fair election impossible, justify an order requiring the Respondent to bargain with the Union upon request as an appropriate remedy for the Respondent's 8(a)(1) violations.[8]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Heck's Inc., Clarksburg, West Virginia, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Unlawfully interrogating employees concerning their union membership, sympathies, or activities.

(b) Threatening employees that choice of a union as their collective-bargaining representative would lead to the closing of the store.

(c) Illegally polling employees in a nonsecret ballot election to ascertain which employees support the Union.

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[8] *Bishop and Malco, d/b/a Walkers*, 159 NLRB 1159; *Bryant Chucking Grinder Company*, 160 NLRB 1526, 1530, enfd. 389 F.2d 565 (C.A. 2); *Better Val-U Stores of Mansfield, Inc.*, 161 NLRB 762; *Fabricators, Incorporated*, 168 NLRB No. 21.

(d) Interviewing employees under coercive circumstances concerning matters relating to unfair labor practice charges and objections to an election.

(e) Refusing to bargain with Amalgamated Meat Cutters and Butcher Workmen of North America, Food Store Employees Union, Local No. 347, AFL-CIO, as the exclusive representative of its employees in the following appropriate unit:

> All employees of the Respondent's Clarksburg, West Virginia, store, excluding supervisors, guards, and professional employees.

(f) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with the above-named labor organization as the exclusive representative of all the Respondent's employees in the unit found to be appropriate and, if an agreement is reached, embody such understanding in a signed agreement.

(b) Post at each of its retail stores copies of the attached notice marked "Appendix."[9] Copies of said notice, on forms provided by the Regional Director for Region 6, shall, after being duly signed by the Respondent, be posted immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the

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[9] In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order" the words "a Decree of the United States Court of Appeals Enforcing an Order."

Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify said Regional Director, in writing, within 10 days from the date of this Decision, what steps have been taken to comply herewith.

IT IS FURTHER ORDERED that the election held on July 13, 1967, in Case 6-RM-326, be, and it hereby is, set aside, and all proceedings in that case be, and they hereby are, vacated.

Dated, Washington, D.C. Sep 24 1968

FRANK W. MCCULLOCH, *Chairman*
JOHN H. FANNING, *Member*
SAM ZAGORIA, *Member*
National Labor Relations Board

(Seal)

APPENDIX B

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August 13, 1971

Fred F. Holroyd
Lee and Tennessee Avenue
Charleston, West Virginia 25302

Re: Heck's Inc.
191 NLRB No. 146

Dear Mr. Holroyd:

In response to your letter of August 5, 1971, please be advised that the Union filed a petition to review the order of the National Labor Relations Board on July 9, 1971. I am enclosing herewith a copy of our petition.

We hereby renew our request that your client, Heck's Inc., comply with the order of the Board as outlined in Mr. Gore's letter of July 27, 1971. As you know, the Union requested fuller relief than was originally ordered by the Labor Board in this case. Our request for additional remedies was considered meritorious by the Court of Appeals for the District of Columbia Circuit and accordingly the case was remanded to the Board for consideration of these remedies. In the decision referred to above, the Board considered our request for remedies on remand and

found certain of them to be appropriate in this case. The Union is petitioning the Court of Appeals to review the recent order only in so far as it failed to provide the full relief requested by the Union. We do not intend to raise to the Court of Appeals those remedies which the Board found appropriate and ordered on remand. In reference to the issues currently before the Court of Appeals for the District of Columbia, I would refer you to *NLRB* vs. *Ogle Protection Service*, 77 LRRM 2832; *NLRB* vs. *United Shoe Machinery Corp.*, 77 LRRM 2719; and *I.U.E.* vs. *NLRB* [*Tiidee Corp.*], 426 F. 2d 1243. Since the remedies ordered by the Board in its recent decision, as far as it goes, are not being challenged by the Union in the Court of Appeals and, indeed, have not previously been specifically challenged by Heck's before the Labor Board, we hereby renew our request that you comply immediately with the National Labor Relations Board order entered July 1, 1971 as outlined in our letter of July 27, 1971.

Very truly yours,

JUDITH A. LONNQUIST

JAL/vw

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 71-1550

FOOD STORE EMPLOYEES UNION, LOCAL NO. 347, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, *Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

Certified List of the National Labor Relations Board

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.115, Rules and Regulations of the National Labor Relations Board—Series 8, hereby certifies that the list set forth in the Index attached hereto, consisting of one volume, constitutes a full and accurate transcript of the entire record of a proceeding had before said Board and known upon its records as Case Nos. 6-CA-3989 and 6-RM-326.

IN TESTIMONY WHEREOF, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 20th day of August, 1971.

/s/ OGDEN W. FIELDS
Ogden W. Fields
Executive Secretary
National Labor Relations Board

(Seal)

INDEX TO CERTIFIED LIST

[1] Heck's Inc. was Respondent before the Board.

[2] Petitioner in No. 71-1550, was Charging Party before the Board.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 71-1550

FOOD STORE EMPLOYEES UNION, LOCAL NO. 347, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, *Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

Certificate of Service

The undersigned certifies that one copy each of the Board's certified list with index attached and chronological list of relevant docket entries in the above-captioned matter has this day been served by first class mail upon the following counsel at the addresses listed below:

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/s/ MARCEL MALLET-PREVOST
Marcel Mallet-Prevost
Assistant General Counsel
National Labor Relations Board

Dated at Washington, D.C.
August 20, 1971